**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION NO.23405 OF 2005

ORDER:

This writ petition is filed seeking writ of Mandamus declaring the action of the respondents in erecting the board in the land of the petitioner admeasuring Acs.1.15 in old survey Nos.20/4 and 20/253 correlated to R.S.Nos.67/1, 67/2 and 71/1 in Ward No.14 of Bhadrachalam Gram Panchayat in Khammam District as violative of Articles 14 and 300A of Constitution of India and also the law laid down by the Supreme Court. The petitioner also seeks a consequential direction to the respondents not to interfere with the land of the petitioner.

The case of the petitioner in brief is as follows. The land in old survey Nos.20/4 and 20/253 (hereafter called, the petition property) of Bhadrachalam originally belonged to Bellamkonda Kamalanadhudu, who had Nagad patta from the earstwhile estate holder. After his death, daughter of Kamalanadhudu, Dasari Mahalakshmi succeeded to the property. She sold an extent of Acs.2.00 under registered sale deed to Chandaluri Adilakshmi, Tanguturi Rama Subbaiah and Tummalapati Venkata Krishna Rao. Subsequently the petitioner and two others namely, Nadendla Kutumba Rao and Cherukuvada Sriramamurthy purchased the property under two separate registered sale deeds from the vendees of Dasari Mahalakshmi. The petitioner claims that he has been in possession of the property since then without any interruption and paying necessary revenue taxes including non-agricultural land assessment tax (NALA). The petitioner alleges that on 21.10.2005, the third respondent with help of the fifth respondent erected a board to the effect that petition property belongs to the Government. On 22.10.2005 a News item was published in the local Newspapers informing that foundation stone for tribal community hall to be constructed by the fourth respondent would be laid in the land. Therefore, the petitioner filed a suit on 27.10.2005 before the District Collector-cum-Agent to the Government under the Agency Rules, 1924 and also filed a separate interlocutory application seeking *ad interim* injunction. The same was not taken up immediately. In the meanwhile on 29.10.2005, the Chairman of Zilla Parishad, Khammam laid foundation stone for construction of tribal community hall under a centrally sponsored scheme. The petitioner contends that the property exclusively belongs to the petitioner and the Government or the fourth respondent have no manner of right to interfere with the title, interest or possession of the petitioner.

The matter came up before this Court on 31.10.2005. While directing the learned Assistant Government Pleader for Revenue (General), to get instructions in the matter, this Court ordered *status quo* by reason of which construction was stopped. The respondents 1 to 3, respondent No.4 and respondent No.5 filed separate counter affidavits and therefore, the matter was heard at length on 16.11.2005 and is being disposed of at the admission stage itself.

The Mandal Revenue Officer (MRO), the third respondent herein, filed counter affidavit, in substance, denying the title of the petitioer to the land in R.S.No.67/1, 67/2 and 71/1 of Bhadrachalam. He, however, admitted that Dasari Mahalakshmi

claimed patta in respect of the land in old survey Nos.20/3 and 20/5 correlated to R.S.No.67/2 and that such patta was granted under the relevant Ryotwari Settlement Regulation in Case No.7333, dated 26.5.1979. The MRO also asserts that the sale deeds under which the petitioner purchased the property are subsequent to coming into force of A.P. Scheduled Areas Land Transfer Regulations, 1959 as amended by Regulation 1 of 1970 (hereafter called, SALT Regulations) and therefore the transaction is void. It is further stated that land acquisition proceedings were initiated to acquire the land in question but subsequently, the same was withdrawn. The land is classified as 'Assessed Waste Dry', which was occupied by ten encroachers. Action was initiated under A.P. Land Encroachment Act, 1905 and eviction orders are passed against those encroachers, who approached the appellate authority i.e., the Revenue Divisional Officer, Bhadrachalam where the appeals are still pending. It is also alleged that the petitioner is not in possession of the property and that the land belongs to Government.

The fourth respondent is Integrated Tribal Development Agency (ITDA). In its counter while denying the title of the petitioner, it is alleged that the petitioner has made false allegations regarding the proceedings before the authorities under ryotwari settlement regulation and that Dasari Mahalakshmi was granted patta only in respect of Acs.3.00 of land, which was acquired by the Government for Agricultural Market Yard. The fourth respondent, therefore, assets that no land was left with Dasari Mahalakshmi to sell to petitioner and two others and therefore the sale deeds are sham. Elaborate allegations are made, a reference to which is not necessary for the purpose of this case. It is stated that the Hon'ble Chief Minister allotted a sum of Rs.25.00 lakhs for construction of S.T. Community Hall as per the assurance given during his visit to Bhadrachalam on 31.10.2004 and therefore the fourth respondent has taken up the work. The fourth respondent also raised objection regarding maintainability of the writ petition, in view of the suit filed by the petitioner before the Agent to the Government. The fifth respondent, who is Station House Officer, has also filed counter affidavit stating that on the request of the third respondent, the police provided necessary protection at the time of erection of the board.

The petitioner has filed detailed reply affidavits with reference to the counter affidavits filed by respondents 3 and 4 and alleges that for the last more than 35 years the petitioner alone is in possession of the property and it was improper for the revenue officials to have resorted to highhanded action by using police force to erect the board and also to prevent the petitioner from entering the land.

The learned Counsel for the petitioner, Sri P.V.Ramana, submits that the action of the respondents 1 to 4 in preventing the petitioner to enter the land and erecting the board showing as if it is a Government land is illegal and arbitrary. He would submit that as petitioner has long standing possession, even if the land is Government land, the Government cannot resort to such highhanded action or initiate action under the A.P.Land Encroachment Act, 1905. He places strong reliance on **Govt. of A.P., v. Thummala Krishna Rao**, **S.R. Ejaz v. T.N. Handloom Weavers' Cooperative Society Ltd. State of U.P. v. Manohar** and **Distict Collector, Ranga Reddy v. K.Narasinga Rao**. He would urge that so far the

Government has not issued any orders allotting the petition property to the fourth respondent and MRO is not competent to hand over the land. Nextly, he would urge that the action of the respondents is grossly violative of principles of natural justice and no notice was issued by any of the respondents before entering the petitioner's land.

Learned Assistant Government Pleader for Revenue, Sri Surya Kiran, and learned Counsel for ITDA, Sri B.Srinivasa Rao, vehemently opposed the writ petition. They contend that the petitioner has filed a suit before the Agent to the Government and when he failed to obtain any interim orders, he moved this Court without disclosing the fact of filing the suit and therefore, the petitioner should be denied any relief in this writ petition. Secondly, they contend that Dasari Mahalakshmi was given patta only for Acs.3.00 of land, which was acquired for agricultural market yard and therefore, should could not have executed any sale deed in favour of petitioner and others. The learned Counsel for ITDA specifically raised a contention that petitioner sold away the property to number of third parties against whom action was initiated under Land Acquisition Act and therefore the petitioner has no *locus standi* to file the present writ petition claiming the petition property. Both the Counsel reiterate other contentions raised in the counter affidavits filed on behalf of their clients and contend that the sale in favour of the petitioner and others is hit by SALT regulation.

The learned Counsel for the petitioner relies on various documents, which would *prima facie* substantiate the case of the petitioner that he and two others indeed purchased the property under two registered sale deeds dated 05.9.1970. He has also placed some material to show the petitioner's possession. But the respondents 1 to 4 have not placed any material before this Court in support of the contention that the Government allotted a part of the land admeasuring about Acs.0.17 to ITDA. A copy of the panchanama is placed before this Court under which an extent of about Acs.0.17 was handed over to ITDA by the MRO. In the absence of any supporting document or proceedings issued by the competent authority, the Government of A.P., this Court is not able to countenance the submission that the MRO is competent to hand over the land merely based on the proceedings of the Commissioner of Tribal Welfare sanctioning Rs.25.00 lakhs under a centrally sponsored scheme. On *prima facie* consideration, it is plausible to accept the case of the petitioner for the purpose of this case regarding possession only though this Court refrains from recording any definite finding. It is well settled that the permission under Article 226 of Constitution of India is not proper for determining the question of title to property claimed by the petitioner or respondents. Such a dispute has to be resolved after regular trial and recording evidence, which is only possible in a duly constituted suit before appropriate Court.

When a citizen is in possession of the property, it is improper for the State to deprive the person in possession by highhanded methods with the help of police. The decisions cited by the learned Counsel for the petitioner in **S.R. Ejaz v. T.N. Handloom Weavers' Cooperative Society Ltd** (supra) and **State of U.P. v. Manohar** (supra) abundantly support the proposition and it is not necessary to dilate

on this matter. The petitioner having noticed the attempts of the respondents 3 and 4 to construct a tribal community hall in the land in survey Nos.67/1 and 67/2, immediately moved the Agent to the Government along with an application for *ad interim* injunction. In the nature of things, the Agent to the Government ought have taken up the matter immediately. Therefore, it would be in the interest of all the parties to direct the Agent to the Government to take up the interlocutory application filed in the suit and pass appropriate orders for *ad interim* injunction. Though the amounts were sanctioned by the Commissioner of Tribal Welfare in October 2004, things started moving up recently. Therefore, it would be in the interest of justice to order *status quo* for a period of three weeks from today, to enable the District Collector-cum-Agent to the Government to consider the interlocutory application of the petitioner.

Accordingly, the writ petition is disposed of directing to maintain *status quo* for a period of three weeks from today and further directing the District Collector-cum-Agent to the Government to immediately take up the suit filed by the petitioner and pass appropriate orders in the interlocutory application for *ad interim* injunction, after hearing the petitioner and opposite parties in the said suit. This interlocutory exercise shall be completed within a period of two weeks from today. There shall be no order as to costs.

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(**V.V.S.RAO, J**)

.11.2005.

NOTE:

Dispatch copy of the order to the

District Collector-cum-Agent to the Government,

Khammam today.

(B/o)

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